

**Before the
Federal Communications Commission
Washington DC 20554**

In the Matter of:

Schools and Libraries Universal Service)
Support Mechanism)

CC Docket No. 02-6
FCC 03 - 101

**Comments from the
Illinois State Board of Education**

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70 **Introduction**

71
72 Initially, the Illinois State Board of Education (“ISBE”) wants to thank the Federal
73 Communications Commission (“FCC” or “Commission”) and the Universal Service
74 Administrative Company / Schools and Libraries Division (“SLD” or “Administrator”) for its
75 ongoing commitment to the Universal Service Program for Schools and Libraries (“E-Rate”
76 or “Program”). The E-rate Program has successfully spurred connectivity across our State,
77 especially for public and non-public K-12 schools and districts in economically-
78 disadvantaged and rural areas of Illinois. We welcome the opportunity to comment in this
79 important proceeding.

80
81 The ISBE respectfully submits these comments as an agency involved in a variety of
82 programmatic roles: as the lead agency representing primary and secondary public schools
83 across the State of Illinois; as a reviewer and approval agency for technology plans; as a
84 support agency for the Illinois’ statewide internet access network, the Illinois Century
85 Network (ICN); and finally, and in its most important role, as the lead agency that assists
86 Illinois’ K-12 public schools -- and to extent possible non-public schools -- with program
87 applications, appeals and reviews.

88
89 The ISBE also supports the efforts of the State E-Rate Coordinators Alliance (SECA) of the
90 Chief Council of State School Officers (CCSSO), and has assisted them in their comments
91 filed in this proceeding. We offer these Illinois-specific comments as a complement to those
92 in order to highlight issues that are critical to our schools.

There is no doubt that the E-rate program is a very real benefit to our schools by providing monies and resources to improve teaching and learning. However, we believe that six years of experience allows everyone involved to take a step back for a moment and reflect on its successes and ways to improve to the program. Accordingly, we submit these comments in an effort to:

- streamline the process to make it more inclusive of schools who – to a school -- find the program administratively burdensome;
- further the legislative goals of the program while continuing to push for an equitable distribution of program dollars;
- prevent fraud, waste and abuse so that the program's resources are appropriately and efficiently spent.

At the same time, we respectfully disagree with parties who would eliminate the program without offering and supporting a viable alternative to assist schools and libraries in this important policy area.

We note that our comments and recommendations rely on these fundamental perspectives as a guide:

- The program's focus needs to remain with applicants, assisting them to receive the appropriate resources to complete and maintain their network infrastructure in support of their educational goals. The program should not evolve into a lengthy, costly gauntlet of forms, reviews, rules and procedures that undermine the actual program goals.
- The program should allow applicants the maximum flexibility to choose between service providers, technologies and service options to support their educational curricular outcomes.
- The program should be administered in the simplest, most efficient method possible in order to ensure equitable distribution of program funds, and reduce fraud, waste and abuse. Applicants should be held accountable for their requests, but the

125 application and review process should not deter them from receiving an equitable and
126 appropriate share of resources.
127

128 ISBE believes these principles should be guiding factors in any decisions related to program
129 improvement. We fully recognize and continue to support the FCC and SLD's efforts in
130 verification, review, and other areas to address waste, fraud and abuse. However, we believe
131 the solution is ***not*** to add more rules, regulations and forms to an already complicated
132 process. If any new rules, regulations and forms should be necessary, these should eliminate
133 several existing barriers to better and more efficiently serve the applicant.
134

135 Once again, we applaud the FCC and the SLD in implementing and administering a
136 complicated, heavily scrutinized program that weaves together several laws, rules, and
137 regulations. Yet throughout the process, it is imperative that the FCC and SLD treat E-Rate
138 applicants as ***customers*** -- customers who cannot spend precious administrative time and
139 money to comply with the myriad and often confusing program rules and regulations that
140 appear to do more to discourage applicants than to root out fraud, waste and abuse.
141

142 The Commission should recognize that despite all of our best efforts, many schools do not
143 apply simply because the administrative burdens outweigh the benefits. Hence, the roles that
144 groups such as the ISBE play -- including face-to-face contact to complete the application
145 and reimbursement process -- are critical to program success. Toll-free 888 numbers and
146 web-sites are good and important, but they do not go far enough in assisting applicants to
147 successfully apply to a complicated program, much less have them remain active participants
148 and supporters.

149

150 We have no doubt that the level of scrutiny by Congress, the FCC, the GAO and others is
151 very high. Yet, we believe the answers are not to add Rules and Regulations, but instead
152 simplify the program and make the accountabilities easier and stronger. Hence, much of the
153 focus of our comments is to simplify the program without a loss of accountability.

154

155 As is our custom, we ask our schools (public and non-public) to offer us their comments and
156 recommendations to direct our filing here. We note here that we cannot understate the levels
157 of applicant frustration with the cumbersome application and review process – and our
158 comments need to reflect their sentiments. Everyone made the point that the process needs to
159 be streamlined, reviews need to be fair, and inappropriate rules dropped. More than anything
160 else, schools are frustrated with the process, and many - including some of the smallest that
161 do not have the personnel to work the program - have opted out of the program rather than
162 continue working on an application that is as likely to get denied as approved. In short, the
163 process is weighing down the program.

164

165 We ask that the FCC take note of the comments below from one of our districts in suburban
166 Chicago. When asked about the topics up for review, their technology coordinator responded
167 that the questions asked in the Second Order may have missed the point. The issue for them
168 is:

169 “[It] would be the extremely complicated and burdensome application process that is
170 currently in effect. There are way too many steps spread out over much too long of a
171 time period, and there are too many opportunities for missed communications that can
172 make a school ineligible. Because the process takes well over a year to implement,
173 the responsibility for completing the application may pass between two or more
174 persons at the district level, and that increases the possibility that one of the many

175 steps may be missed. I know of school districts that no longer bother with e-Rate
176 simply because it is so time-consuming, cumbersome, and the outcome is always
177 uncertain.”
178

179 Another school district made the point that the SLD’s focus on waste, fraud and abuse has
180 harmed smaller schools much more than larger districts, as larger districts can afford to hire
181 full-time help, including vendors and/or consultants to do the work for them, and “game” the
182 system. In short, we agree that the FCC and the SLD – in concert with whatever legislative
183 directives that may be needed – have to streamline the program and simplify its application
184 process and administration. We also ask the FCC to refer back to the earlier, April, 2002
185 NPRM comments provided by ISBE, the CCSSO, and other State agencies on these matters
186 and open a focused, expedited Rulemaking on streamlining the program.

187

188 Throughout the process, the ISBE will continue to assist schools to get through the
189 application process, despite deep deficits and budget cuts at the State and local level.
190 However, we agree with our schools that the program has to become easier and more
191 equitable for the applicant, not more complicated. We offer our comments in this section
192 with this in mind.

193 **Comments and Recommendations on the Implementation of the Second**
194 **Report and Order**

195
196 **Permanent Extension on Appeals**

197 We applaud the Commission’s decision to permanently extend the date to file appeals from
198 30 to 60 days, and that the proper receipt date is the postmark date, not the filing received
199 date. This extra time does allow for applicants to receive the commitment letter, process the
200 information, and develop their appeals. This decision also allows applicants extra time
201 during summer vacations to exercise their rights of appeal. While we maintain our earlier
202 position that 90 days is more appropriate; again, given the summer breaks and the ability of
203 staff to respond, we appreciate the extension to 60 days as codified in the Second Report.

204
205 **Eligible Services – Educational Purpose**

206 The ISBE applauds the FCC for expanding the definition of “educational purposes” to
207 include services such as voice mail and wireless services that are used as part of “...activities
208 that are integral, immediate, and proximate to the education of students...[now] qualify as
209 educational purposes under this program.” We ask that the Commission and the SLD clarify
210 this interpretation and its implementation well in advance of the application window so that
211 applicants have definite guidelines for eligible services. If left undone – and examined in
212 concert with the Commission’s attempt to codify the 30% ineligible services denial policy --
213 it can have serious problems for applicants and lead to a slew of funding denials. In short,
214 the Commission needs to offer direction to applicants on “toeing the fine line” between
215 accurately applying for eligible services and not getting caught in the “30%” Rule which can
216 deny entire, majority-eligible funding requests if 30% or more is deemed excessive or
217 ineligible. So while we applaud the decision, we ask that the FCC and SLD take serious,

expedited, steps in interpreting and implementing the decision so applicants can file appropriately.

On this same topic, the Commission has also stated in the Second Order:

“By adopting this standard, we provide to schools and libraries ***and the state and local authorities that govern them*** a more definitive interpretation of educational purposes, in order to assist them in pursuing their programmatic objectives.”(emphasis added).

As part of the governing authority in the State of Illinois, the ISBE recommends that the FCC interpret and implement this decision to allow ***safety-related*** telecommunications services used by school personnel on and proximate to the school campus. This would include 911 and E-911 circuits leased from telecommunications carriers; wireless services used by non-teaching school personnel such as bus drivers, security personnel and teaching personnel on field trips. We also recommend that the Commission allow the expansion of services to support professional staff development, and remote services to physically and developmentally-challenged students. These services, along with voice-mail, homework hotlines, and the traditional voice services, are critical to the educational purpose of the school.

The Commission needs to specify these services and contexts so schools can apply accordingly. To leave these vital services in doubt will lead to confusion and extended appeals on what is considered eligible. Finally, indecision -- or no decision -- on these points will lead to two negative outcomes: applicants being denied per the “30%” scenario -- or just as disappointing -- schools don’t apply for eligible services for fear of being denied.

We also ask that the Commission revisit the Alaska decision with an eye towards the original intent of the program, which we believe was to open up access to modern telecommunications services to remote, high-cost and economically-challenged areas of the U.S. In short, and along the lines of “educational purpose”, we propose that “non-traditional” schools and non-profit educational entities that assist educational entities in these areas be considered eligible to use “excess services” obtained through the program. These services would be used, as in the case of the Alaska decision, when not in use by the schools and/or libraries. This allowance would be limited to non-profit educational institutions; should not allow excessive or wasteful requests; or cost the program (and its applicants) any additional monies.

The point here is at core, simple – let’s better use the services that are already out there to support student educational outcomes inside and outside the classroom without penalizing the applicant. Situations such as sharing a T-1 line and using it after the school day by a local community-based educational institution; or sharing by an off-site professional development institution that supports professional development for school staff; or use to provide home access for students from economically-challenged areas, and students with physical and developmental challenges, should be allowed within the program.

We feel that situations such as these not only support state and local educational purposes and outcomes, but also support Federal educational efforts such as “No Child Left Behind” (NCLB) and other programs that involve students, teachers and parents in support of

improving educational outcomes for every child from across the nation, including students from Beaver, Alaska; rural Sandoval, Illinois; and urban East St. Louis, Illinois.

The NCLB Act calls for the enhancement of education through technology and the closing of the digital divide, in part through the effective integration of technology resources and systems with teacher training and curriculum development. The NCLB is a far-reaching Act, which requires the involvement of technology at many levels, from student training and achievement testing to staff training and the delivery of special services to students who have fallen behind their peers. Under NCLB districts are encouraged to effectively integrate technology resources with teacher training and curriculum development and establish research-based instructional methods.

Accordingly, the establishment and maintenance of a robust information network with easy access for all students and staff should have support and funding from the E-Rate program. Distance delivery of services becomes more important as the requirements of NCLB stretch local school resources. Small and rural districts need access to the resources of other districts, state universities and state departments of education in order to upgrade teacher qualifications. Their educational purpose should also support the multiple assessments of student achievement which require electronic storage of data and the capacity for analysis and reporting. And to truly assure that no child left is left behind, the e-rate program needs to support services that allow schools to better serve children with developmental and physical limitations, including distance learning, and limited forms of home-based connectivity. Finally, many educational institutions, particularly in light of the

requirements of NCLB, are trying to provide an educational environment where students can continue the learning process after the school doors close, and where parents can be involved in the educational activities of their children.

Under NCLB, it makes educational sense to provide a seamless educational environment in order for students to leave school at the regular time and go to a library or community center and gain access to programs, content and research on the Internet. To date, this idea has been piloted among a few school districts and libraries with great success. These institutions tend to be located in areas where they have sufficient resources to provide such services.

However, students who, for example, live in public housing cannot access their work because schools and libraries currently are not permitted to share access to the E-rate discounted network with community groups and neighborhood centers. With the proper safeguards in place, we support the concept of being able to share E-rate discounted bandwidth with a limited class of currently non-eligible entities during off-school hours -- as long as the bandwidth is used for educational purposes.

Those safeguards, however, will be the key to ensuring that demand to the fund is not increased due to this provision, and that the entity does not initially request more than it needs for educational purposes. We agree that these safeguards, as the Commission suggested in its order commonly called the Alaska Waiver, should include:

- "That the school or library request only as much discounts for services as are reasonably necessary for educational purposes;
- "The additional use would not impose any additional costs on the schools and libraries program;

314 •"The use should be limited to times when the school is not using the services."
315
316
317

318 Further, we suggest that the Commission limit the entities receiving this currently unused
319 bandwidth to non-profit entities that provide a robust educational program. Of course,
320 equipment needed to connect these entities to the network would not be E-rate eligible in any
321 way, only the unused bandwidth. We also believe that the scope needs to be kept to
322 educational and, accordingly, staff development purposes. We also recommend that the
323 applicants assure the FCC that the Children's Internet Protection Act (CIPA), and other
324 internet-safety related assurances are in place at any site that shares the bandwidth.
325

326 In support of this proposal -- and in light of the Commission's focus on waste and abuse --
327 we submit that the best control over abuse of this expanded definition of eligible services is
328 the applicant institution itself. Since the eligible applicant and billed entity must remain the
329 school or library, and accordingly, they must pay for the discounted portion of the service(s),
330 and support any reviews or audits, they will have to closely monitor the use and cost of
331 services. Most importantly, the applicant must examine the value of sharing the resources to
332 their institution in light of their mandate to improve teaching and learning. This important
333 check, more than any other, will assure that applicants will only pay for services that enhance
334 educational outcomes.
335

336
337 Hence, the FCC should closely analyze the provisions of NCLB, and make the appropriate
338 changes in the eligibility list to support the activities that it requires of the educational

community. As the e-rate program evolves, it cannot do so in a vacuum; it needs to bind itself more fully with other Federal educational efforts to improve student achievement.

In sum, we applaud the FCC in its efforts to expand educational use and apply limited eligibility to safety-related telecommunications services such as 911 and E-911 circuits. We also ask that the FCC open an expedited, specific Rulemaking to better define eligible services to better fit larger Federal initiatives, including NCLB. We support the Commission's efforts at defining and refining the implementation of this important aspect of the Second Order. We welcome the opportunity to assist the FCC in these efforts.

Funding of Duplicative Services

We agree with the FCC's intent in this matter. Waste and duplicative services should not be funded. In practice, the ISBE undertakes significant efforts with schools on this matter, assisting them with obtaining the best prices for goods and services through state master contracts, educational tariffs, purchasing cooperatives, and other cost-reduction services. We submit that due, in large part, to our efforts, prices in Illinois on e-rate eligible goods and services are among the nation's lowest. Moreover, we also assist schools in scrutinizing their vendor proposals to assure that the prices are reasonable in comparison to other larger negotiated prices. Not only do these efforts cut e-rate program costs, but assures that scarce school resources which are used to pay for the undiscounted portions are expended efficiently.

Nevertheless, we caution that on the duplicative services issue, the “devil is in the details” of implementation. We ask that the Commission and the SLD recognize that schools – especially as it relates to internal connections – must often re-apply due to application delays and appeals – appeals, which we add, may be for violating an obscure rule or interpretation, or a mistake by the SLD. We submit that applicants cannot be penalized under such circumstances. We recommend that once an internal connections funding request is decided, the school should have options depending on the outcome. If the original request is denied, under appeal, or “As Yet Unfunded”, the newer “duplicate” application should also be considered on its own merits. If the original application is funded, the school should retain the ability to drop one of the requests. In short, a final decision on an alleged duplicative funding request should not be decided until the original application is decided. The program’s complicated application process and timelines -- and a sense of equity -- dictate no other course of action in reviewing applications under this rule.

We also believe that the proper implementation of the duplicative services rule dictates that reviewers examine requests beyond a simple analysis of the three service “baskets” and the billed entity level. That is, the decision needs to be made at a product, service, or function role, not the much broader telecommunications, internet access or internal connections levels, as there are many diverse products and services under each of these categories. For example, a school may have a T-1 line for internet access, but the PE instructor may also need a line and dial-up internet access in the field house as the LAN never got to his office. The school may be seen as asking for duplicate services, but in reality, it is not. As well, districts and consortia need the ability to purchase services for each

of their entities, both as a whole and separately, without fearing that the asking for the same service basket for a different entity under their authority will endanger the entire application or funding request. In short, we ask that the Commission implement this rule as a scalpel wisely and cautiously -- with an eye towards waste and abuse -- and not as a heavy axe that cuts everything in sight.

Eligibility of Voice Mail

We wholeheartedly agree with the Second Order's inclusion of voice mail services. They are the equivalent of e-mail and other services that allow teachers, administrative staff, students and parents to communicate with each other on educational, safety and other issues related to the educational process.

Nevertheless, we question why the Commission does not allow PBX-based voice mail systems, or other on-site premise equipment with the same functionality, to be treated on par with the traditional telco-provided voice mail? We believe that the Commission should refine its decision on this issue to allow a technologically-neutral and vendor-neutral, voice-mail offering to compete on an equal basis with the telco-provided service. That is, if a school can prove its non-telco solution, amortized over a reasonable time frame, is as, or more cost-effective than the telco-provided option, it should have the ability to acquire that service under the program. Among the core policy foundations of the e-rate program include technological neutrality and allowing the applicant to exercise the "maximum flexibility" to take advantage of competitive markets and advanced technologies to serve its educational

needs. Accordingly, other, non-telco provided voice mail options should be allowed when they better and more efficiently serve the voice-mail needs of the applicant.

Computerized Eligible Service List

We agree that a computerized eligible services list would be beneficial. We appreciate the Commission's efforts at developing a pilot program with several important principles that stress flexibility, easy access and easy modification of the list. We stress that the list NOT be exhaustive – that is, that items not on the list may also be eligible. In short, a list will only be as good as its ability to keep pace with the technologies, vendors and eligible services within the program. And no single list can keep up with the technologies and vendors in this area; so flexibility and responsiveness are key. If it does not, the list will likely do more harm than good.

We welcome the Commission's direction to the SLD ("Administrator") to implement a pilot program no later than FY 2005, but again stress to them that making sure the list is not exhaustive, that it be flexible, and responsive to technological changes will, in the end, make this either a success or just another impediment to the program.

Codification of the 30% Policy

We agree that a codification of the "30% Policy" -- whereby a funding request can be denied due to 30% or more of the request is for *ineligible service* -- is a step in the right direction to address waste. However, so far, we vehemently disagree that in its current implementation it

is either fair or appropriate. During this last funding year, the SLD has interpreted this rule to also apply to mis-calculations of eligible services. As of this year, mathematical errors of eligible services that exceed 30% of the original amount are not amended in the review process, but instead, are now summarily denied. This implementation of the rule has now turned into a bludgeon that does much more to discourage and quash legitimate requests, rather than guaranteeing that wasteful, ineligible requests are denied.

In response, the ISBE has assisted several of its schools with appeals where the “30% rule” has evolved into complete funding denials. These cases were simple mathematical errors or miscalculations of eligible services, not efforts to defraud the program. Among these appeals include the Quincy Christian School, the Iroquois West School District, and Belleville High School District. In the Iroquois West case, even the SLD agreed that 67% of the denied local POTS telecommunications services request was legitimate, and still went ahead and denied the entire request. In short, the SLD did nothing to either alert the applicant of the services in question, and allow them a chance to defend their request, or allow them the opportunity to receive partial funding, then appeal the decision for the remainder. In short, Iroquois West is a prime case of good intentions gone wrong in the implementation.

We submit that this revised implementation of the rule is wrong, especially in light of the Program’s application process and window deadlines. Inherently, the program’s application process requires applicants to infer future costs of eligible services based on information that is often 6-9 months from the actual effective date. Errors by applicants in calculating costs, and errors by the SLD in reviewing these, will inevitably occur. But instead of working with

applicants to substantiate and modify requests in the review process, it has turned into to case of “30% Gotcha”, whereby complete denials are occurring. Finally, we add here that, in contrast, if the applicant *under-estimates* eligible services in their calculations under review, the program *does not* allow them the opportunity to increase the request to cover these. Hence, some sense of fairness to the applicant community needs to be exhibited in the process.

We submit that this implementation of the “30% Policy” – one which punishes miscalculations and legitimate errors in estimating future costs – is contrary to the Program’s goals and does little to support its efforts to address waste, fraud and abuse. The program has several other internal checks and balances to assure that only legitimate costs are funded, including checks at the 486, BEAR, SPIF and other reviews that substantiate and re-affirm actual expenses. Also, vendors and applicants know full well that they are subject to post-BEAR audit reviews to substantiate any dispersed funds.

In its continuing efforts to address waste, fraud and abuse, the FCC should to continue to allow the SLD some limited latitude to deny entire FRNs where they believe blatant price inflation has occurred. But to deny applicants like West Iroquois and others in the “30%” group their funding -- due to simple mistakes for which they are quickly willing to correct -- is contrary to the goals of universal service.

We note again that in contrast, the SLD’s past practice was much more appropriate – reviewers lowered the request to the sustainable amount of eligible services. Any

480 miscalculations and mathematical errors were adjusted and remedied in the review process
481 after SLD and the applicant consulted with each other. We repeat that the 30% cap on
482 *ineligible* services has been in place for several years and is common practice and knowledge
483 among applicants; this new variant on the rule is not, and its effects have not been welcome
484 by the applicant community.

485
486 We ask that the FCC direct the Administrator the leeway to review and adjust funding
487 commitments upon review with the applicant, basing the adjustments on the evidence
488 submitted during the review process; and that it allow the SLD to send out a revised funding
489 request, recognizing the legitimate, substantiated portion of the request per the review. We
490 disagree with the FCC in the Second Order when it states that requiring the SLD to inform an
491 applicant that its application is about to be rejected may not be the best solution. This misses
492 the point of what should be the review process – work with applicants so that they know
493 what is incorrect and needs substantiation and/or adjustment, then make the proper
494 adjustment to the funding request. To say that doing this will add administrative costs is
495 puzzling – these reviews have occurred over the entire course of the program, and
496 adjustments were made as a matter of course. Why is this now an additional cost?

497
498 We recognize the need for applicants to be accurate in their requests. We push them hard to
499 get the best data they can in our application sessions with them. But mistakes on both sides
500 happen with a program as complicated and administratively burdensome as the E-rate. To
501 use this rule as it is currently being implemented, and not allow the SLD leeway in adjusting
502 funding requests is just not fair to the applicant community.

503 **Choice and Timing of Payment Method**

504
505 The ISBE stands by its long-standing position -- taken over the last two NPRM's -- that the
506 choice of discount or BEAR reimbursement should always remain with the applicant. We
507 agree with the FCC's position on this matter, and appreciate their direction and advice to
508 have applicants and vendors memorialize the option(s) chosen in their service agreements.
509 We recognize that there may be small administrative costs to the vendors in implementing
510 this choice; however, we feel these have been more than offset by the increased business
511 activity that the program has engendered.

512
513 **Suspension and Debarment**

514
515 We agree with the FCC's position on this matter. Debarment of a vendor for a civil
516 conviction of actual or attempted fraud, theft, embezzlement, forgery and other related
517 offenses cited in the Second Report, is in everyone's best interests. But we strongly state that
518 the FCC must allow any applicants unwittingly caught in such circumstances the ability to
519 change vendors as expeditiously as possible.

520
521 We note that in at least one case we've seen, this issue has led to excessive delays with all
522 applications from schools with a suspect vendor. In this case, a small, non-public school
523 unknowingly contracted with a suspect vendor for a small, fairly simple set of goods and
524 services. A year later, their funding request is delayed while the vendor works through legal
525 reviews that are based on alleged fraud on another, much larger-scale project. In short, the
526 small school in our example has been penalized for the vendor's alleged inappropriate
527 activities in another, completely unrelated situation. We ask that the FCC and the SLD

clarify the situation with all of the affected applicants; allowing them the option of changing their vendors, without having to wait through a potentially long legal proceeding. We note that the Commission has already allowed similar treatment in a recent case involving the State of Tennessee (FCC -03-161A1, released July 2, 2003). In this case, the FCC granted, in part, a request by the State of Tennessee for approval to change its service provider for Funding Year 2002. Tennessee made its request after the FBI initiated an investigation into Education Networks of America, Inc. (ENA), the service provider named in its application -- and evidence that this investigation had delayed Tennessee's application.

In its decision, the FCC allowed the SLD to issue a funding commitment, pending a determination that Tennessee's application and subsequent invoicing of services for Funding Year 2002 complies with the rules of the schools and libraries program. They then allowed the SLD to disburse funds to a designated common carrier -- in effect a refinement of the "Good Samaritan" Rule -- for payment to ENA's subcontractors. In short, it allowed services rendered to be paid to another vendor, while the investigation on the vendor's activities continued its course. We submit here that allowing further review, and ultimately, payments to another vendor to assure services can continue during an investigation -- is an important "safety net" for applicants in the implementation of this rule.

Finally, we quote the FCC in the Tennessee decision for direction in cases where vendors are under review:

"It remains incumbent upon the applicant to ensure its compliance with all program rules. But we decline to relegate the Tennessee Funding Year 2002 application to limbo indefinitely, during the pendency of this ongoing investigation."

We agree.

553 **Comments on the Further Notice of Proposed Rulemaking**

554
555 **Carryover of Unused Funds**

556 The ISBE agrees with the Commission on its proposed unused fund carryover rules. The
557 FCC's proposal to carry over the funds to boost the amounts available in subsequent years
558 makes sense in light of the funding cap, and the potential that Priority 1 services demand may
559 exceed the current cap. We applaud the FCC's decision in light of continuing demand for
560 goods and services by applicants.

561
562 **Technology Plans**

563 We believe the FCC / SLD should keep the current practice of requiring approved technology
564 plans by the July 1 start of the funding year. We strongly disagree with any efforts to push
565 that date back in the process, including back to the date of the filing of the Form 470.
566 Schools do tech plans for reasons other than E-rate, including NCLB, and other State and
567 local tech initiatives. We know of no other program that requires tech plan approvals before
568 the funding year. In short, moving the date back adds just another burden for schools.
569 Moreover, the ISBE – as the primary approver in Illinois – would also have to reshuffle its
570 own review schedules to cover any new proposed date.

571
572 Finally, we ask the FCC to direct the SLD (and any of its designated auditors) to match their
573 tech plan review criteria with a sense of reality. For example, reports are surfacing that
574 auditors and reviewers are writing up cases where an applicant school fails to cover *all* of the
575 e-rate discounted services in their tech plans. This includes services such as local voice
576 services, cell-phones and other basic telecommunications services. We ask that we remind

ourselves that tech plans are also strategic school improvement plans that link technology with improved teaching and learning. Not everyone can – or should have to -- weave local phone services with that process. In short, we ask that the FCC/SLD, and any auditors working on their behalf, take a reasonable -- and relevant -- review standard when auditing technology plans.

Other Measures to Prevent Waste, Fraud, and Abuse

The Commission must look at the issue of waste, fraud and abuse (WFA) from the *applicant's perspective* as well as from the programmatic side. Audits, reviews and revised rules are necessary, but the FCC and the SLD must also look at what incentives does the program provide that encourage such behavior, and how can we make the program easier – and ultimately, make the lines of accountability sharper and more focused.

Adjustments to the Internal Connections Discount Matrix

Over the years, our experience has shown that many of the cases of waste, fraud and abuse involve internal communications and high-discount applicants. Clearly, the incentive to waste is highest where the discount levels are highest. In these cases, there is a large incentive to inflate margins on internal connections equipment and services. In contrast, telecommunications services are much more likely to be competitive, tariffed, and publicized. Ironically, effective market and government price controls are much more evident for these services than for many “free market” internal connections products and services.

601 While we don't say here that all cases of waste, fraud and abuse are among poor schools with
602 internal connections, the evidence over years point to many cases coming from these areas of
603 the program. In an effort to address these issues -- and just as important -- to bring greater
604 equity and allow more schools to receive internal connections monies, we propose
605 adjustments to the discount matrix for internal connections.

606
607 We strongly concur with the Commission's desire to ensure connectivity in the nation's
608 poorest schools and libraries; but we also believe that the current discount matrix on internal
609 connections does far more harm to the program as a whole. A ten percent match does not
610 provide a sufficient incentive for applicants and vendors to limit internal connection funding
611 requests and set reasonable, market-driven prices to these requests. Often such requests
612 include items such as excessive or overly elaborate maintenance agreements or "help desks"
613 which go far beyond basic network maintenance; "super-sized and super-priced" routers,
614 servers and switches; and fiber cabling where CAT 5/6 is more than sufficient.

615
616 We note that discount rates for Priority One services remain unchanged since day one of
617 the program, while a simple analysis of funding requests and questionable cases strongly
618 indicates that the minimal ten percent match creates an incentive for some applicants to
619 purchase more services at inflated prices. The primary charge of the E-Rate program under
620 the Telecommunications Act of 1996 is to provide connectivity for schools and libraries.
621 The 90 percent discount for telecommunications services and connectivity, particularly for
622 poor and isolated applicants, is necessary and should not be changed. We again note here
623 that there appears to be relatively little waste or abuse with Priority One applications at all

discount rates. However, the internal connections categories has spurred the largest investigations on waste, fraud and abuse.

Secondly -- and just as importantly -- we also believe that dropping the discount levels will improve the *equity* of the program. This change will allow more schools to finally receive internal connections monies. Schools in the 50%-80 discount levels -- by no means affluent schools -- will now be able to receive internal connections monies to assist them. They have not been able to do so since the second year (funding year 1999) of the program.

We therefore propose a change in the discount matrix for Internal Connections. Using the current Urban/Rural discount matrixes, we propose reducing the internal connection discounts for applicants in the two highest discount bands to a rate of 70 percent. We ask that the Commission also look at similar comments from groups such as the State E-Rate Coordinators Alliance (SECA) of the CCSSO to gain more specifics on how the discount table should be amended. Also, we note that the ISBE, CCSSO and other state education entities also recommended similar changes in the previous, April 2002, NPRM Comments.

We restate our comments which note that at the outset, the Commission and the SLD were given the legislative ability and authority to change discount levels to better serve the program's goals and purposes. To date, the FCC has never taken advantage of this simple, yet direct, change in order to address a host of current e-rate concerns. We ask that the Commission either move forward with this recommendation with the current record on this

issue; or if necessary, develop a fast Notice of Comment so that the changes can be developed well ahead of the next round of applications (Funding Year 2004).

Every Other Year Internal Connection Funding

We propose to limit discounts on internal connections equipment at the entity level to once every two years (every other year). It is important to emphasize that this restriction should be site-specific, that is, applicable to each entity or site level, and should apply only to internal connections equipment. Maintenance services should not be subject to this restriction. In short, we submit here that schools need to know that annual replacement or upgrades of internal connections equipment that should be good for at least two years (e.g. hubs, routers, servers, switches, wiring) is not in the best interests of the program, nor for that matter, their own finances.

Finally, we also recommend that the implementation of such a decision follow many of the safeguards and concerns we state in our comments on funding duplicative services. In short, we welcome efforts to deny funding for wasteful, fraudulent requests, but ask that the SLD take care in assessing when and where they occur.

Focused Resources for Large District and Consortia Applicants

As a lead agency with the Illinois Century Network (ICN), the nation's largest state-funded internet access network -- and one of the largest applicants in the program -- we continue to submit comments in this important area. Consortium applications pool resources, negotiate bulk prices to reduce unit costs, and save their schools and libraries money. In turn, these savings are passed on to the program in the form of reduced requests. Per our earlier

673 comments, our conservative estimate is that the ICN saves the program from between \$11 –
674 15 Million annually over individual applicant requests for internet access and traditional T-1
675 connection costs.

676
677 Consortium applications would benefit greatly from administrative reforms to address their
678 size and complexity. We are greatly concerned that the Administrator does not timely many
679 large-dollar statewide consortia applications for Internet access and telecommunications
680 funding. The fiscal stress and cash flow problems of many consortia and large applicants,
681 caused by application review delays have reached unacceptable levels. We request that the
682 Administrator establish a unit staffed by experienced reviewers dedicated to processing
683 large-dollar and/or complex consortia applications.

684
685 The value of consortia to the E-Rate program cannot be overstated. Large consortia, and
686 state networks in particular, aggregate demand and reduce the total cost of
687 telecommunications services for their members, and by extension, the program. Consortia
688 also reduce the number of applications that SLD must process. Most state networks operate
689 under intense scrutiny by state agencies and state legislators, thereby reducing the risk of
690 fraud, waste, and abuse. Lastly the FCC May 8, 1997 Report and Order establishing the E-
691 Rate program sought to encourage collaboration and consortia creation for the reasons noted
692 above.

693
694 **Parity of discount methodologies for consortia with other applicants.**

695
696 Currently, consortia applicants are denied the opportunity to use of a weighted
697 average to calculate overall discounts. We believe it is unfair, discourages formation of

consortia, and forces an undue burden on applicants. In contrast, school districts can calculate the shared discount level using a weighted average of their member schools. The simple average process is unfair for consortia in that a small district of 150 students is weighted the same as a district of 400,000 children, while the consortia resources needed to serve both entities are clearly different. The latter process of individually listing entities forces consortia to list every school individually, creating huge applications. Allowing weighted average options of districts allows consortia to simplify the application process and puts them on par with other applicant classes.

Close the Window in Mid February

Each year the SLD Board Committee establishes dates for the Form 471 filing window. The typical window closing dates of early November to mid-January do not conform to applicant school year and legislative funding cycle. In this last year, the Commission and the SLD allowed the window to be extended until mid-February, 2003. We believe this should be a permanent part of the program. While we are aware of the need to carefully consider the length of time necessary to reasonably review applications prior to July 1, we believe adoption of many streamlining suggestions contained in this filing will allow flexibility in moving the window closing date into February. This expanded time allows more applicants -- especially those with very limited resources -- the necessary time to file correctly, this begins to address issues of waste, fraud and abuse. As well, it allows assistance centers -- like ISBE -- an increased opportunity for outreach to first get applicants in the mix, then address the Commission's concerns.

We propose that the Commission permanently change the deadline for the submission of the Form 471 to the middle of February. This change will increase the likelihood that more schools, school districts, libraries and consortia will comply with the requirements of the Form 470, and have a better idea of their budgets for the upcoming school year, thus decreasing the likelihood of unrealistic requests for funding. It also will allow for all entities to have access to the most up-to-date Free & Reduced Lunch data to arrive at consistent discount percentages within the states.

Payment and Invoice Recommendations

We believe BEAR payments should be made directly to applicants without first going to the service provider. This would avoid delays -- and in a few cases we've witnessed -- discourage service providers from fraudulently keeping payments and not turning them over to applicants, as required by program regulation. Lastly, several of our schools have also been tied up in bankruptcy proceedings as vendors have kept both the school's payments, and now the reimbursements of the program.

Hence, we propose that BEAR payments should be made directly to applicants rather than through the service provider intermediary. The BEAR form was developed as a means of addressing situations where E-Rate applicants had already fully paid for the services that were approved for discounts. The form was devised as a means of accommodating both service providers and applicants in order for the applicants to recoup the discounts from the program. The service provider merely acts as the conduit for receiving the payment intended to reach the E-rate applicant, and then forwarding it on. Therefore, is particularly egregious

when service providers fail to comply with the BEAR form rules that compel them to remit the payments that they receive from the Administrator as the conduit for forwarding the payment to the E-Rate applicant.

On a positive note, the Commission's Good Samaritan Process appears to have been successful in getting a reimbursement check ultimately processed through a different service provider, who reimbursed the school district. But this complicated process works in only certain cases, and usually, only after months of delay. We are grateful that this process was implemented and hope it will serve as a beneficial tool for other applicants in this unfortunate situation. But at the same time, this process would have been completely unnecessary had the BEAR check been sent directly to the intended recipient, the E-Rate applicant. Per our comments, and those of the CCSSO in the earlier NPRM, we believe there are no programmatic constraints to the FCC allowing direct payment of BEAR reimbursements to the applicant.

Applicants Should Be Allowed to Review and Approve SPIF's

The Commission should require vendors to obtain signoff from the applicant prior to submission of the Form 474 – Service Provider Invoice Form (SPIF) -- for non-recurring services. In brief, the Form 474 allows the vendor to submit invoices for payment to the SLD. The Form assumes and asks the vendor to certify that the work is completed satisfactorily and the services are functional. Yet nothing in the current rules and procedures prevents a vendor from submitting the Form 474 without school/district approval. We have witnessed at least two cases (one involving over a million dollars) where the vendor

submitted a SPIF and the work was nowhere near completed. In all fairness, the SLD requires the applicant to obtain vendor approval for submission of BEAR Forms for reimbursement, but the SLD makes no similar requirement of vendors for the Form 474. By requiring applicant signoff, the school/district has the opportunity to review vendor invoices to ensure accuracy and compliance prior to submission to the SLD and prior to having funds released to the vendor.

Fairness and accountability insists that if the vendor receives monies in the name of the applicant, and the applicant is subject to an audit for these expenditures, then the applicant should have some review and sign-off on the Form 474. While some parties may comment that submission of the Form 486 is ample notification for the applicant, we submit that requiring the vendor to obtain applicant signature on the Form 474 will assure that the vendor has not over-charged, nor asked for funds before the goods and services are provided. This step will advance the Commission's efforts to curb waste, fraud and abuse.

Financial Support for States

We restate our case that now, more than ever, support is essential. To date, many state agencies have offered significant support for applicants throughout the E-rate application process, while there continues to be no financial support for state coordinators from the SLD. From day one, state coordinators have played an increasingly important role in the responsible and efficient administration of the E-rate program; now with much less state and local funds to support their activities, continued support is at risk.

793 In an informal survey of states by the CCSSO, states spend an average of about \$330,000
794 each to supporting its applicants and the SLD. Among the services state agencies provide are
795 the following: review and approval of technology plans; a standardized format for reported
796 National School Lunch Program percentages by school; ongoing guidance for applicants
797 through the application process; alerting the Administrator to problems experienced in the
798 field with interpretations and on-line functionality; and assistance with appeals. As well,
799 States have been one of the first lines of defense against questionable vendors and practices
800 that can lead to program waste, fraud and abuse.

801
802 To be sure, these services vary by state. However, additional thought needs to be
803 given to recognizing the contributions of these organizations. To that end, we encourage the
804 FCC to allow discussion among the Commission, the SLD, and state agencies to develop
805 how that financial support should take place. We note that the FCC / SLD is proud of its
806 small administrative costs relative to the size of the program, but we clearly note that these
807 costs significantly underestimate the total administrative costs of the program. The FCC
808 needs to take a realistic view of the costs to run this admittedly-complex program; so far,
809 they have not.

810
811 At a minimum, we ask that compensation include the following: paying for travel and
812 lodging expenses to the annual Train-the-Trainers meeting; costs related to reviewing and
813 approving technology plans; subsidize states for local and regional training; and provide a
814 stipend to each state for specific services provided within the state on behalf of the SLD.

815 **Enforcement**

816
817 We agree that service providers, applicants and consultants should be debarred for willful or
818 repeated violations of program rules. We applaud the initial steps the Commission took in
819 this effort with the April 29 Second Order. However, there remains insufficient enforcement
820 authority by the Commission or Administrator to ensure that there are severe consequences
821 for program violations that are willful and or repeated.

822
823 Regulations should go beyond debarment from the program for criminal conduct and
824 include willful or repeated violations of program rules. This debarment for willful or repeated
825 program violations would be applied against service providers, applicants and consultants.

826
827 Debarment terms could be tied to the severity of the violations and should include not
828 only length of nonparticipation and whether the debarment operates across all service
829 categories or is limited.

830 **Summary of Comments**

831 We again commend the FCC and the USAC/SLD for their efforts in implementing
832 and administering the E-rate program. The program has a lot to be proud of in its efforts at
833 addressing the technology needs of many of our poorest and most isolated schools.
834 Nevertheless, we believe the time is long overdue to make substantive changes that will
835 continue these efforts, while making the process easier – and more accountable -- for
836 applicant and administrator alike. Six years of program experience allows us to make
837 significant, substantive changes that would better serve applicants. We also restate our case
838 that the FCC needs to better meld the program with other Federal initiatives such as NCLB
839 Act. The e-rate should work better, and not in a vacuum to other technology initiatives.

840

841 Several of the proposals here are simple and should not be hard to implement. These
842 seemingly small steps will go a long way towards improving the program. However, many
843 of the reforms we propose require more substantive review and analysis. For example,
844 redefining the program’s eligible products and services with educational purpose may require
845 further follow-up to assure inclusion from all the affected parties. Hence, we ask that the
846 FCC open an expedited NPRM on these issues. But we add that the process needs to start
847 quickly and end promptly. It cannot go on for years, and ultimately, be partially addressed
848 years later. Significant changes need to take place to assure the program’s viability. We add
849 that these need to address not only the application process, eligible services and eligible
850 entities, but also the funding mechanism to assure equity and stability. The time and effort to
851 streamline this program will assure its reasonableness, equity and stability in the eyes that are
852 most important – the applicant’s and the children they serve.

853

854 The founders of the e-rate program expended a lot of time, energy and vision in its
855 creation. We should do no less to assure that the program continues to support their goals
856 and does not get bogged down in Rules and Regulations that, ultimately, diminish its impact
857 and do nothing to diminish waste, fraud and abuse. We stand ready to assist the FCC and
858 the USAC/SLD with these important efforts -- but we respectfully ask that the process begin
859 promptly.

860

861 Please do not hesitate to call on us for any assistance in these important matters.